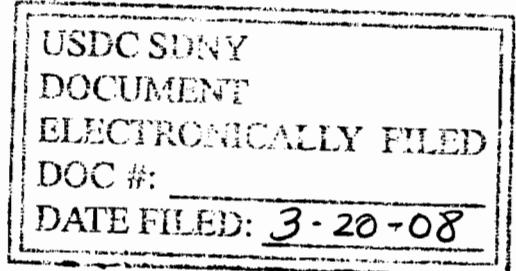


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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 DONALD HEIMSTAEDT, TODD KORTE, :  
 :  
 Plaintiffs, : 07 Civ. 9389 (JSR)  
 :  
 -v- :  
 :  
 PREM.AIR NEW YORK, LLC, PREM.AIR :  
 GROUP OF NEW YORK, LLC, PREM.AIR :  
 GROUP, LLC, MCQUAY NEW YORK, LLC, :  
 GEORGE KOUTSSOS, ERIC BERKOWITZ, :  
 MCQUAY NEW YORK PROFIT SHARING PLAN, x  
 AND XYZ TRUSTEES OF THE MCQUAY NEW  
 YORK, LLC 401(k) PROFIT SHARING PLAN,  
 :  
 Defendants.  
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JED S. RAKOFF, U.S.D.J.



For the reasons explained in open court, see tr. 3/19/08, the Court rules as follows on defendants' motion to dismiss certain parts of the First Amended Complaint:

First: Plaintiffs' counsel represented in court that plaintiffs withdraw without prejudice Count IV of the First Amended Complaint, alleging breach of contract, as against defendant Prem.Air Group, LLC. See tr. 3/19/08. For that and the other reasons stated from the bench, the part of the motion to dismiss directed at Count IV is denied as moot.

Second: Defendants' motion to dismiss Counts VI and VII is denied, without prejudice to later renewal.

Third: Plaintiffs are granted leave to replead Count V, alleging fraud and misrepresentation, and Count VIII, seeking to pierce the corporate veil, by March 28, 2008. Should defendants wish to renew their motion to dismiss with respect to the repleaded

counts, they may submit by April 11, 2008, a letter brief of no longer than ten single-spaced pages setting forth their arguments. Plaintiffs may submit a reply letter of similar length by April 18, 2008. The Court will hold oral argument on any renewed motion on April 29, 2008, at 10 a.m. Until April 29, 2008, no discovery related solely to Count VIII may proceed.

Fourth: The date previously set by the Court for discovery to conclude, April 4, is extended to April 17, and the dates previously set for summary judgment motion practice and a pretrial conference are withdrawn. On April 29, the Court will set a schedule for any further discovery, if necessary; for summary judgment motion practice; and for a final pretrial conference.

SO ORDERED.

Dated: New York, NY  
March 20, 2008

  
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JED S. RAKOFF, U.S.D.J.